



Homeland Security

July 14, 2004

The Honorable John Conyers, Jr.
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515-6216

Dear Congressman Conyers:

I am writing you to provide a status report on your request that we conduct a review into the circumstances under which the Immigration and Naturalization Service removed Maher Arar, a naturalized Canadian citizen, to Syria. You wrote me on December 16, 2003, requesting that my office conduct an investigation because of your concerns about the legal and human rights implications of Mr. Arar's removal to Syria and your desire "to ensure that such a rendition never happens again."

We have strived to be diligent in our review of this matter. Indeed, I would have preferred, and thought it reasonable to have expected, that you would have had a completed report by now. However, I write to inform you that our work has been delayed and may not be completed in a timely matter. Here is a brief history and explanation of our effort.

After receiving your request, I assigned the matter to our Office of Inspections, Evaluations, and Special Reviews. On January 8, 2004, the project officially started when I sent a formal initiation letter to the Immigration and Customs Enforcement office. By mid-January, we learned that there were restrictions on parts of the material we sought to review. We were informed that some of the information that we sought was classified. With respect to other information, we were informed by department attorneys that we could not have access on grounds of privilege related to the civil litigation that Mr. Arar has brought against the federal government.


By mid-May, we were able to review the classified documents that we had sought and that initially we had been told might not be made available to us. In the main, I am satisfied that there were sound reasons for the documents to have been classified, that they were not classified as a means of shielding them from scrutiny by an office such as mine, and that some consideration of our request prior to disclosure was appropriate, although the process was unduly protracted and frustrating.

During this same period, my office sought to interview present and former government employees relating to their role in the Arar matter. Concurrently, we have discussed with government attorneys the privilege issues that have been cited to block our access to additional documents that we believe exist and to impede our requests to interview potential witnesses. In regard to these efforts, we have had no success, although we continue to press our arguments. Government counsel continue to assert the privilege or to decline to seek a waiver, which we understand could be done, and as a result have stymied this aspect of our work.

I do not believe that the assertion of a legal privilege, such as the attorney-client privilege (when in the context of advice given by government counsel to a government official regarding government work) or the attorney work product or pre-decisional privileges can be asserted to block the clear statutory access to the agency's business conferred upon Inspectors General by section 6(a)(1) of the Inspector General Act. Further, I understand that there exists a strong legal proposition that providing information to an agency Inspector General does not constitute a waiver of privileges available to an agency in litigation with a third party.

Therefore, I believe my office should have been given these materials earlier, and that they are still owed to my office. I shall continue to seek access to them. In the meantime, I write with this explanation because of the unanticipated delay in responding to your request. I am pleased to meet with you or to answer any further questions you may have.

Sincerely,



Clark Kent Eryin
Inspector General